



**Division of Local Assistance
Procedures Development Office**

Process Review 99-01

Disadvantaged Business Enterprise Program

FINAL REPORT

1. Prepared By:	Signed _____ EUGENE SHY Process Review Engineer	10/18/01 _____ Date
2. Recommend Approval:	Signed _____ KEVIN POKRAJAC, Chief Office of Procedures Development	10/21/01 _____ Date
3. Approved:	Signed _____ TERRY L. ABBOTT Chief Division of Local Assistance	10/26/01 _____ Date

I. EXECUTIVE SUMMARY

The goal of this review was to ensure that local agencies are complying with the elements of the Code of Federal Regulations (CFR), Title 49, Part 23, entitled "Participation by Minority Business Enterprise in Department of Transportation Programs" ("Process Review Plan 99-01" inadvertently stated Title 49, Part 26). Specifically, it was to measure if Caltrans districts and local agencies were 1) adequately maintaining Disadvantaged Business Enterprise (DBE) administrative records to ensure full compliance with DBE regulations and 2) satisfactorily managing agreements and contracts utilizing federal-aid funds.

The process review began in April 1999 and was done in two phases due to the higher priority given to implement the newly received DBE regulations (49 CFR Part 26). The first phase consisted of the following findings and actions:

- (1) A review of one district's DBE administrative files and records found a number of deficiencies.
- (2) A review of ten local agencies' DBE files and records using the Local Programs DBE Survey Form found that one of the local agencies did not meet the requirements of the Caltrans *Local Assistance Procedures Manual* (LAPM).
- (3) A letter dated June 10, 1999, was sent to all Local Agency Partners addressing the new federal DBE regulations (49 CFR Part 26). It made recommendations to the local agencies concerning the current projects and records under 49 CFR Part 23.
- (4) A questionnaire was sent to the District Local Assistance Engineers (DLAEs) in all districts, except the district previously reviewed, questioning their DBE program practices.

The questionnaires were returned and the other 11 districts were found to be in compliance. The answers to the questionnaires were summarized in matrix form with a letter to the Division Administrator, Federal Highway Administration (FHWA). The letter recommended that the DBE Process Review be scaled back to the two districts that did not provide a copy of their DBE tracking system as requested in the questionnaire, and a revisit to previously visited district and local agency to verify their progress in complying with the DBE requirements.

The second phase of the process review resumed in early summer of 2001 with the following findings:

- (1) The previously visited district was now found to have satisfactory DBE records/files for federal fiscal year (FFY) 98/99 after records of ten local agencies were randomly selected and reviewed.
- (2) The previously reviewed local agency's DBE records were found to be satisfactory as they took corrective action in 1999 after the initial phase of the process review.
- (3) The two districts in question were found to have had a satisfactory DBE Tracking System in 1999.

In summary, the goal of the process review was achieved as all of the districts and local agencies, either initially or later, demonstrated compliance with 49 CFR Part 23. This DBE process review, the concurrent two DBE mini-process reviews, and the statewide training for the new 49 CFR Part 26; all have helped to ensure compliance with the new DBE regulations.

II. PROCESS REVIEW CHRONOLOGY

A. Background:

Process Review Plan 99-01 “Disadvantage(d) Business Enterprise Program” was approved by the Design and Local Programs’ Assistant Program Manager on February 9, 1999. Process reviews were to be conducted on four districts with the intention to interview a minimum of six local agencies, and review the DBE records for 15 projects in each district. FHWA verbally requested that a certain Caltrans district be the first district to be reviewed.

B. Process Review:

At the district verbally requested by FHWA to be visited, nine local agencies were visited and reviewed. These local agencies consisted of 8 cities and 1 county. Except for one city, the reviews were satisfactory and the Local Program DBE Survey Form, applicable Construction Phase-Project Files and Local Agency’s DBE Program forms were satisfactorily completed for each local agency for FFY 98/99. One city’s Local Programs DBE Survey Form and Construction Phase-Project Files Form were considered to be unsatisfactory due to the unsatisfactory condition of the agency’s files and the failure of the city to answer all of the questions. That district’s DBE files and records were also reviewed during the visit and such significant deficiencies were identified that the files and records were considered unsatisfactory. Both the city’s and the district’s DBE deficiencies were subsequently addressed in a memorandum dated June 3, 1999.

After the initial process review in the one district, there were major concerns by both Caltrans and FHWA that there might be other districts with similar deficiencies in their DBE files and records. Consequently, it was determined that the memorandum dated June 10, 1999, with a questionnaire should be sent to all of the districts, except the one district already visited, to determine if the findings of deficient DBE files and records in that one district were an isolated incident or a systemic problem. After return of the questionnaires by all of the districts, except the district already visited, it was learned that all of the other districts were doing a satisfactory job of monitoring, managing, and oversight of their local assistance DBE program. The answers to the questionnaires were summarized and presented in matrix form in a letter dated June 30, 1999, to the Division Administrator, FHWA. This letter recommended that the DBE Process Review be scaled back and a return visit be made later to the one district and one city to verify that the deficiencies in their files and records had been corrected. A second recommendation was that the DBE tracking system of two districts be reviewed, as those two districts had not provided a copy of their DBE tracking system in response to the questionnaire.

On May 3, 2001, the completion team performed a follow-up process review at the previously district for compliance as to their DBE records for FFY 98/99. The district was now found to have established satisfactory DBE administration records and files for each local agency for FFY 98/99. Records of ten local agencies in that district were selected at random and a survey was performed using the Local Programs DBE Survey Form. Where appropriate, the Construction Phase-Project Files form was also completed. The results of the surveys were satisfactory for the ten selected local agencies consisting of nine cities and the one county. The team also made a cursory review of that district’s current files and records of its local agencies as to the implementation of 49 CFR Part 26. Based upon the cursory review, the records and files were current and complete.

On May 24, 2001, the previously visited city was again visited by the completion team (absent Corina DeLeon and Lance Yokota) and two district representatives and surveyed using the Local Programs DBE Survey Form/Local Agency's DBE Program. Their DBE program was found to be satisfactory as corrective action had been taken in 1999 following the visit of the initial Process Review Team. The files of the project which had previously been found to be incomplete, were also surveyed using the Local Programs DBE Survey Form/Construction File - Project Files and the District Construction Monitor Review Form. These files were found to be complete and satisfactory based upon those forms. The files of another project were not surveyed because the project has been delayed indefinitely due to right of way problems.

The two districts, that had not provided evidence of a DBE Tracking System being in place, were queried to provide evidence that they had a DBE Tracking System in place and were using it in 1999 since a copy had not been provided with their response to the questionnaire in 1999. These two districts responded affirmatively by not only providing descriptions in writing of the systems in place but also providing copies of correspondence to and from the local agencies utilizing their 1999 DBE Tracking System.

III. PROCESS REVIEW PLAN

A. Goal of Review:

The goal of this review was to ensure that local agencies are complying with all elements of 49 CFR Part 23. Based upon the ten local agencies that were sampled in the district visited, one local agency was initially found not to be in compliance but later came into compliance. The goal was expanded when deficiencies were discovered in the visited district's DBE files and records.

B. Objective of Review:

The objectives of this review were to determine local agency compliance, and if the District Local Assistance Engineers (DLAEs) were satisfactorily monitoring the local agency DBE programs.

- (1) Of the ten local agencies reviewed, one was found to be out of compliance with the DBE program. The non-compliant local agency in the survey was subsequently brought into compliance.

- (2) One district Local Assistance office was reviewed and found to be in non-compliance. The other 11 district Local Assistance offices were found in compliance making the non-compliance in the one district an isolated incident. The fact that the non-complying district Local Assistance office subsequently came into compliance should result in a 100 percent compliance rate for the districts. One other consideration is the time between the initial and the follow-up review, which is a two-year period, during which the DBE implementing regulations changed from Part 23 to Part 26 of 49 CFR.

C. Background:

This process review was recommended by FHWA as mentioned in the Process Review Plan. FHWA representatives participated as team members in both the initial and completion phases of the process reviews.

D. Method and Responsibilities:

The original plan was to conduct the review in four districts. In each of the four districts, a minimum of six local agencies would be interviewed and the DBE records of 15 federal-aid projects would be reviewed. As it actually occurred, the first phase consisted of conducting a review of only one district in the field. This included reviewing the DBE records of 15 projects and interviewing ten local agencies. The remaining eleven districts were reviewed by questionnaire in the first phase. The second phase was all done in the field and consisted of the following:

- (1) The one district found previously in non-compliance was again reviewed along with that district's DBE records of 15 federal-aid projects, and
- (2) The one city previously found in non-compliance was again reviewed.

E. Review Team:

Initial Team:

Rick Gifford, OLP Process Review Engineer
Nancy Phillips, OLP DBE Coordinator
Bessie Papailias, DBE Program Representative
Mary Jane Daluge, FHWA Representative

Completion Team:

Eugene Shy, OLP Process Review Engineer
Jackie Smith, OLP DBE Coordinator
Corina DeLeon, DBE Program Rep.
Lance Yokota, FHWA Representative

F. Review Schedule:

The original schedule was to complete the draft report by July 1, 1999, and the final report by August 2, 1999. These dates were exceeded because once the DBE records in the reviewed district and the one city were determined to be non-compliant, both entities were allowed sufficient time to bring their records into full compliance. Also, the change

in DBE regulations from 49 CFR Part 23 to Part 26 and the change of Process Review Engineers both contributed to the delaying of the process review.

G. Findings, Observations, and Recommendations:

Finding #1:

At the time (1999) of the initial DBE process review in the one district reviewed, deficiencies were discovered in that district's DBE records as stated in the memorandum dated June 3, 1999. Based upon the results of the questionnaire sent to the other 11 districts, it was determined that it was an isolated case and the deficiencies were confined to the reviewed district.

Observation #1:

Deficiencies in the reviewed district's DBE records and files prevented the district Local Assistance personnel from doing an adequate job of monitoring and enforcing the DBE regulations. However, the district's deficient records and files did not adversely affect or prevent the local agencies from implementing the DBE regulations in their projects and fully complying with the DBE requirements. The follow-up corrective actions taken by personnel in that district have resulted in the district's past DBE records and files now being in full compliance with 49 CFR Part 23. The past system of DBE records and files is now being used as a guide for the records and files of the new 49 CFR Part 26 which the district is currently assisting its local agencies in implementing. The district is now better prepared to assist, monitor and enforce their local agencies' implementation of the 49 CFR Part 26 (DBE) regulations.

Recommendation #1:

No further action needs to be taken regarding district DBE records and files on 49 CFR Part 23. Regarding the implementation of 49 CFR Part 26, all of the districts should clearly understand their responsibility for maintaining and monitoring DBE records received from their local agencies. The attached draft matrix entitled "DBE Roles/Responsibilities" will help to identify and define the district's quality control role and responsibilities for monitoring their local agencies' DBE programs. The matrix can also be used to identify where the DBE files and records reside as well as the DBE files and records that the districts should receive and maintain until payment of the final project invoice is made by Caltrans to the local agency. The use of the questionnaire by Caltrans HQ was a valuable, efficient and economical method of performing quality assurance in determining the DBE preparedness and methods of each district and should continue to be used on a periodic basis. Another such tool that has been recently developed is the DBE Program Tracking Database. This database is now being used to track local agency submittals of their DBE program and overall annual goals. This tool can be expanded to provide not only pertinent local agency DBE information but also can be used by Caltrans HQ for quality assurance purposes.



Finding #2:

In 1999, the DBE records and files of one of the ten local agencies reviewed in one district were found to be deficient and incomplete. That local agency, a city, had one funded federal-aid project and one unfunded federal-aid project that was in the planning stage at the time of the initial process review. At the time of the follow-up process review by the completion team, the city's DBE records and files for the active federal-aid project were found to be complete and in compliance. The unfunded federal-aid project was still in the planning stage due to right of way problems; consequently no DBE records and files for this project were available for review by the completion team.

Observation #2:

A follow up review by the completion team of the city's one active federal-aid project, that was earlier found to be in non-compliance, now found that the project documents were in compliance with the then current DBE regulations. The fact that the local agency was able to recover and put their DBE records and files in order for the completion team to review would lead one to believe that the files were misplaced and not missing. At the time of the follow-up process review by the completion team, it was observed that the local agency had moved into new offices within the last several years and that this could have contributed to their previous inability to locate the records and files.

Recommendation #2:

No further action needs to be taken regarding the one local agency's DBE records, files, and project files subject to 49 CFR Part 23. Regarding the implementation of 49 CFR Part 26, all of the local agencies should clearly understand their responsibility for maintaining and reviewing the DBE records received from their contractors. The attached matrix entitled "DBE Roles/Responsibilities" will help to identify and define the local agency's role and responsibilities for managing, executing, and monitoring their projects. The matrix can also be used to identify the DBE files and records that the local agency should receive, submit and maintain as well as those that should reside in the districts. The DBE records and files should be retained by the local agency for three years after payment of the final project invoice by Caltrans to the local agency.

-----End of Report-----

Attachment

Enclosures:

- Process Review Plan 99-01
- Memorandum dated June 3, 1999; Subject: DBE Process Review 99-01-District xx Findings" from the Caltrans "Department of Transportation, Design and Local Programs" to "xx, District Local Assistance Engineer."
- Letter dated June 10, 1999; from the Caltrans "Department of Transportation, Design and Local Programs" to all "Local Agency Partners"
- Memorandum dated June 10, 1999; Subject: DBE Process Review from the "Department of Transportation, Design and Local Programs" to the "District Local Assistance Engineers" in Districts 1-12
- Letter dated July 30, 1999; from the Caltrans "Department of Transportation, Design and Local Programs" to the "Division Administrator, Federal Highway Administration"
- Completed "Local Programs DBE Survey Forms"
- City of xx's completed Local Programs DBE Survey Form/Local Agency's DBE Program
- City of xx's completed District Construction Monitor Review Form
- Confirmation of District xx's 1999 DBE Tracking System



- Confirmation of District xx's 1999 DBE Tracking System
- Completed "Local Program DBE Survey Form" from local agencies in District xx
- Incomplete "Local Program DBE Survey Form" from City of xx in District xx